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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,517	01/27/2004	Jay C. Elander	102367-00108	9959

27557 7590 06/23/2005

BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER

TUROC, DAVID P

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,517

Applicant(s)

ELANDER ET AL.

Examiner

David Turocy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4,8 and 9 is/are rejected.
- 7) ☒ Claim(s) 2,3 and 5-7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Please update the status of the copending parent application number 10/142936, to include “, now Patent No. 6,696,288”.

2. If applicant desires benefit of a previously filed application under 35 U.S.C. 120 specific reference to the earlier filed application must be made in the instant application. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications. This should appear as the first sentence(s) of the specification following the title, preferably as a separate paragraph unless it appears in an application data sheet. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression “now Patent No. _____” should follow the filing date of the parent application. If a parent application has become abandoned, the expression “now abandoned” should follow the filing date of the parent application.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35

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U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Claim Objections

3. Claims 1-9 are objected to because of the following informalities:

Claim 1 step (b) is awkward: the verbs "apply" and "to form" should more reasonably read, "to apply" and "forming".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1 and 8-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Printed Publication by Frenz et al., hereafter Frenz.

*** During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification" by giving words their plain meaning unless the specification provides a clear definition. See *In re Prater* 415 F.2d 1393 1404-05 162 USPQ 541 and *In re Zletz* 893 F.2d 319, 321, 13 USPQ2d 1320. ***

Frenz teaches of forming a plurality of pre-greased collecting rods for a rotorod sampler comprising forming a group of a plurality of collecting rods and a header as one piece (Page 2). Frenz discloses loading a plurality of collector rods into the base (header) of storage vials. Giving "one piece" its broadest reasonably interpretation, the two pieces, base of vial and collector rods, are brought together to form a single piece for the purposes of dipping into a coating bath. Frenz discloses immersing the collector rods into a suspension of silicon/hexane to apply grease to all the collector rods

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simultaneously (Page 2). Frenz discloses placing plastic covers of the vials, i.e. bring the first component of the container together with the second component to form the container (Page 2).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frenz.

Frenz teaches all the limitations of these claims as discussed in the 35 USC 102(a) rejection above, however, they fail to teach of assembling a plurality of groups to form an assembly and subsequently dipping the assembly.

However, Frenz discloses dipping the collector rods in mass and discloses several thousand collector rods can be dipped per hour and discloses the added benefit of dipping the collector rods is the time savings gain (Pages 2-4). Therefore Frenz reasonably suggests dipping multiple vials, i.e. an assembly of vials, into the dipping bath to increase efficiency (Pages 2-4). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Frenz to form an assembly of vials and subsequently dipping the assembly into the silicone to increase efficiency and reap the benefits of coating more collector rods in the same amount of time.

Allowable Subject Matter

9. Claims 2-3 and 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The closest prior art, Frenz, does not teach of injection molding a header and a plurality of collector rods for a rotorod sampler, where the header includes pins and sockets. In addition the group of collector rods are already adhered to the first component of the container and thus Frenz does not teach *adhering the assembly* to the first component of the container.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Turocy
AU 1762



**TIMOTHY MEKS
SUPERVISORY PATENT EXAMINER**